

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000328

03/10/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

COLLIN YU

v.

LUIS ODILON MOLINA HERNANDEZ

ALEX D GONZALEZ

CHANDLER CITY-MUNICIPAL
COURT
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC

MINUTE ENTRY

CHANDLER CITY COURT

Cit. No. #171472

Charge: 1. DUI/ACTUAL PHYSICAL CONTROL
2. BAC OVER .10%
3. EXTREME DUI

DOB: 08/19/70

DOC: 07/07/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case was scheduled for oral argument on February 10, 2003. On the stipulation of counsel, oral argument was vacated and the case was submitted on counsel's memoranda. This Court has considered and reviewed the memoranda submitted by counsel, and the record of the proceedings from the Chandler City Court.

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On July 20, 2001, Appellant, Luis Molina Hernandez, was arrested within the City of Chandler and charged with: (1) Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); (2) Driving with a Blood Alcohol Content in Excess of .10, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1381(A)(2); and (3) Extreme DUI, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1382. The record reflects that after Appellant's second jury trial, that he was convicted of all three offenses, but judgment was entered only as to charge (3): Extreme DUI. It is from that charge from which Appellant has filed a timely Notice of Appeal.

The only issue raised by Appellant on appeal is that the trial judge erred in permitting testimony concerning Appellant's statements to the arresting officer, over Appellant's *corpus delicti* objection.

Both parties acknowledge in their well-written memoranda that Arizona law is well settled that proof of the *corpus delicti* independent of a suspect's confession is required as a prerequisite to the admissibility of statements by a suspect.¹ The *corpus delicti* requirement is met in a criminal case when the State offers evidence of facts to support a reasonable inference that the crime which is charged was actually committed by some person.² *Corpus delicti* evidence must be independent of the statements from the suspect, which the State seeks to offer as evidence.³ The State need only prove a "reasonable inference" that a crime was committed and that some person committed the crime.⁴ The evidence that establishes *corpus delicti* may be entirely circumstantial.⁵

In this case, the trial judge permitted Chandler Police Officer John Valenzuela, to testify about statements made by the Appellant at the Chandler Police Department after his arrest.⁶ In response to Appellant's counsel's objection challenging the sufficiency of the *corpus delicti*, the trial court found:

It seems to be mostly circumstantial, but it seems clear to the Court there is evidence he (Appellant) drove there. ... In any event, I have allowed those statements in and I agree that those circumstances somewhat seemed to indicate it was within two hours.⁷

¹ State ex rel. McDougall v. Superior Court, 188 Ariz. 147, 933 P.2d 1215 (1996); State v. Weis, 92 Ariz. 254, 375 P.2d 735 (1962), cert.denied, 389 U.S. 899, 88 S.Ct. 226, 19 L.Ed.2d 221 (1967).

² State ex rel. McDougall v. Superior Court, supra; State v. Hernandez, 83 Ariz. 279, 320 P.2d 467 (1958).

³ Id.

⁴ State v. Gillies, 135 Ariz. 500, 662 P.2d 1007 (1983).

⁵ State ex rel. McDougall v. Superior Court, supra; State v. Rivera, 103 Ariz. 458, 445 P.2d 434 (1968), cert.denied, 395 U.S. 929, 89 S.Ct. 1790, 23 L.Ed.2d 238 (1969).

⁶ R.T. of May 15, 2002, at pages 78, 95.

⁷ Id. at 95

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The trial judge's conclusions that circumstantial evidence warranted a finding that the State had proven a "reasonable inference" that the crime of DUI had been committed and that some person had committed the crime are supported by the record. Officer Stephen Waters testified that he observed Appellant sitting inside a white Nissan Pickup truck stopped with the right tires up on the sidewalk and the left tires on the street on Elgin Avenue within the City of Chandler.⁸ Officer Waters observed that the white pickup's headlights were on and that the motor was still running.⁹ Officer Waters could smell the strong odor of alcohol as he leaned down and reached into the car to remove the keys from the ignition.¹⁰ Officer Waters observed Appellant seated at the wheel with his head slumped over and he appeared to be asleep.¹¹ Appellant appeared to have urinated on himself and had difficulty getting out of the truck. Appellant exhibited six out of six cues of impairment from the HGN test.¹² Appellant submitted to a breath test and the results were .168 and .173.¹³ Thus, this Court concludes the trial court correctly found clear circumstantial evidence that the crime of Extreme DUI had been committed and some person had committed that crime. Corpus delicti had been established and the trial court did not err in admitting Appellant's statements in evidence.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed for the crime of Extreme DUI.

IT IS FURTHER ORDERED remanding this matter back to the Chandler City Court for all further and future proceedings in this case.

⁸ Id. at page 1.

⁹ Id. at pages 52-52.

¹⁰ Id. at page 52.

¹¹ Id.

¹² Id. at pages 56-57.

¹³ Id. at page 59.